[JOINT COMMITTEE PRINT]

DESCRIPTION OF THE CHILD SUPPORT ENFORCEMENT PROGRAM AND OF S. 150 (THE "COLLECTION OF STUDENT LOANS IN DEFAULT ACT OF 1983")

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF THE INTERNAL REVENUE SERVICE

OF THE

SENATE COMMITTEE ON FINANCE

ON SEPTEMBER 16, 1983

PREPARED BY THE STAFF

OF THE

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INTRODUCTION

The Subcommittee on Oversight of the Internal Revenue Service of the Senate Committee on Finance has scheduled a hearing on September 16, 1983, to examine the effectiveness of the Federal tax refund-offset provisions for collecting certain delinquent child support payments owed to recipients in an Aid to Families with Dependent Children (AFDC) program. The hearing also will examine the possibility of expanding these, or similar provisions, to other types of delinquent Federal accounts. Specifically, the Subcommittee plans to examine the possible effectiveness of such refund-offset provisions for collecting delinquent child support payments in the case of non-AFDC recipients and to examine S. 150 (introduced by Senator Jepsen) which generally would provide for the collection by the Internal Revenue Service of certain delinquent student loan amounts guaranteed by the Federal Government.

The first part of this pamphlet is a summary of the present child support enforcement program and of S. 150. The second part contains a more detailed description of the child support enforcement program and an overview of some recent court decisions involving the refund-offset provisions which are a part of the program. The third part of the pamphlet contains a more detailed description of S. 150, including present law, explanation of provisions, and effective date.

I. SUMMARY

The Child Support Enforcement Program

Present law provides for Federal assistance in collecting delinquent child support payments from absent parents. This program includes both tax and non-tax aspects. The applicable tax provisions include authorization for the Internal Revenue Service to assess and collect, in the same manner as a tax, amounts reported to it by the Secretary of Health and Human Services as delinquent when State agencies have been unable to collect the sums by other means. An additional collection method is provided by which the IRS can offset Federal income tax refunds otherwise due absent parents of children who receive AFDC payments owing delinquent child and spousal support payments against the delinquent payments and remit the tax refunds to the appropriate State welfare agencies.

Because tax information generally cannot be disclosed except in strictly limited circumstances, the disclosure provisions of the Internal Revenue Code include a special exception permitting disclosure of certain tax information by the Internal Revenue Service solely for the purpose of establishing and collecting these delinquent child support payments and locating individuals owing child support.

S. 150

S. 150, introduced by Senator Jepsen, would provide a new Federal program administered through the tax system for collecting student loans in default which the Federal Government has made or guaranteed. Under the bill, the Internal Revenue Service would collect amounts in default on Federally guaranteed student loans and apply those amounts (through the Department of Education) against the unpaid loan balances. The program generally would be structured in a manner similar to the present assessment and collection provisions for delinquent child support obligations as opposed to the refund-offset provisions.

The provisions of the bill would be effective on January 1, 1984.

II. DESCRIPTION OF THE CHILD SUPPORT ENFORCEMENT PROGRAM

A. Present Law

Overview of program

Title IV-D of the Social Security Act, enacted in 1975, established a Federal program for enforcing child support obligations of absentee parents. The program provides services both to families receiving benefits under an Aid to Families with Dependent Children (AFDC) program and to non-AFDC families. The child support enforcement program is designed to locate absentee parents, establish paternity, and assist in the establishment and collection of child support payments, whether court-ordered, administratively determined, or voluntary.

As a condition of eligibility for AFDC payments, each applicant or recipient must assign to the State any rights to support which he or she may have in his or her own behalf or on behalf of children in the family and must cooperate with the State in establishing paternity and in collecting support payments. States are also required to provide child support enforcement services to families that are not eligible for AFDC; however, one of the two Federal tax enforcement provisions (the refund-offset provisions) does not apply in the case of non-AFDC families.[1]

Effective on July 1, 1975, the Internal Revenue Service was authorized to assess and collect, in the same manner as a tax, amounts certified by the Secretary of Health and Human Services (HHS)[2] as delinquent child and spousal support payments (Code sec. 6305(a)). The Internal Revenue Code further provides that no court has jurisdiction to review Federal assessment or collection activities under this provision. This prohibition is similar in nature to the anti-injunction provision that generally bars suits to restrain assessment or collection of Federal taxes (sec. 7421).

The Omnibus Budget Reconciliation Act of 1981[3] amended the child support enforcement program to provide for collection of past-due child and spousal support by offsetting Federal tax refunds as an additional method of insuring payment of the support in the case of families receiving AFDC payments (sec. 6402(c)). That act also expanded the authority of prior law to enforce support obligations for support of the parent with whom the child is living, required States to have programs to collect child support obligations which are being enforced by reducing unemployment benefits of absent parents, and made other non-tax changes in the program.

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[1] S. 1708, introduced by Senator Grassley, would extend the Federal tax refund-offset provisions of the child enforcement program to non-AFDC families.

[2] Formerly the Secretary of Health, Education, and Welfare.

[3] Public Law 97-35.

The 1981 refund-offset provisions do not contain express anti-injunction provisions like those of the direct assessment provision.

Disclosure of tax information

In general, tax returns and return information are confidential and may be disclosed by the IRS only in certain strictly regulated circumstances (sec. 6103). Violation of these disclosure provisions may result in imposition of fines or prison terms as well as civil damage liability. For this purpose, return information generally means all information included on a person's tax return as well as other information obtained by the IRS that is related to the return or to the determination of tax liability. For example, information as to a taxpayer's identification, the nature and source of his or her income, and the amount of any refund due him or her, is return information.

As part of the Federal child support enforcement program, an exception is made to the general disclosure rules permitting certain disclosures to Federal, State, or local child support enforcement agencies of information on the address, filing status, amounts and nature of income, and number of dependents claimed on the return of a person owing delinquent child support payments. Additionally, the payors of the person's income may be disclosed if that information is not reasonably available from any other source. These disclosures are permitted only for the purposes of, and to the extent necessary in, establishing and collecting child support obligations from, and locating individuals owing the support obligations (sec. 6103(l)(6).

Administration of the refund-offset provisions

Beginning with tax returns filed in 1982, income tax refunds were withheld by the Internal Revenue Service in certain cases and used to pay delinquent child and spousal support (sec. 6402(c)). Under these provisions, the names of persons owing more than $150 in child or spousal support payments and who are at least three months in arrears are reported to the IRS by States through the Office of Child Support Enforcement of the Department of Health and Human Services. HHS consolidates the lists from the individual States and sends the IRS a single nationwide computer tape. IRS then compares the tape with its records and offsets refunds in whole or in part against support payments shown due. Offset refunds are reported to HHS monthly and HHS then arranges for payment to State welfare agencies for further disbursement to local agencies, as necessary.

When all or part of a person's refund is withheld, the IRS notifies the person in writing of the offset. If the taxpayer wishes to contest the action, however, appeal is to the State welfare agency rather than the IRS. If a refund is erroneously offset, the State welfare agency, not the IRS, must reimburse the person whose refund was withheld.

In some cases, the offset refund may be from a joint return filed by a person who is delinquent in making support payments and a spouse who is not obligated to pay the support. If such an offset occurs, the spouse not obligated to pay support may file a claim with the IRS for the portion of the withheld refund attributable to

his or her income. To receive the refund, however, the spouse must provide information necessary to allocate the income and deductions on the joint return so that each spouse's tax liability may be calculated. If such information is not provided, the IRS will allocate the refund according to an established formula (Rev. Rul. 80-7, 1980-1 C.B. 296).

The IRS is entitled to bill (through HHS) the States benefitting from the refund-offset provisions in an amount sufficient to reimburse it for costs it incurs in offsetting refunds for payment of delinquent child and spousal support.

B. Recent Court Decisions Involving the Refund-Offset Provisions

Implementation of the refund-offset provisions has resulted in several court challenges to its constitutionality. Three recent United States District Court cases illustrate the nature of these challenges. Because the refund-offset provisions were only enacted in 1981, appellate courts generally have not addressed the issues raised by the provisions; however, appeals are pending in the United States Circuit Courts in two of the cases discussed below, and in another case which was dismissed as moot.[4]

Sorensen v. *Secretary of the Treasury*

On December 28, 1982, the United States District Court for the Western District of Washington addressed the nature and legality of the refund-offset provisions in *Sorensen* v. *Secretary of the Treasury*.[5] In *Sorensen*, the Court first addressed the issue of standing of the taxpayers to enjoin enforcement of the provisions. The Court held that the refund-offset provisions do not involve assessment or collection of a tax since the United States is merely a transfer agent, and therefore, persons deprived of their refunds have standing to sue, notwithstanding the provisions of the tax law generally prohibiting suits to enjoin the assessment or collection of tax.

The Court then addressed the issue of whether the procedure by which a refund is offset violated constitutional due process guarantees. The *Sorensen* case involved a spouse signing a joint return who did not owe an obligation of support and the nature, under State law, of the interest of the delinquent parent in the income of that spouse. The Court held that the IRS notice procedures violated constitutional due process guarantees, stating that the absence of specific notice by the IRS to the non-obligated spouse that the entire refund would be offset unless she filed an additional claim, but that only one-half of the refund was subject to offset under the applicable Washington State community property law, rendered the notice insufficient to apprise the spouse of her rights.

Nelson v. *Regan*

On January 14, 1983, the United States District Court for Connecticut addressed similar due process challenges to the refund-offset provisions in *Nelson* v. *Regan*.[6] The *Nelson* case also involved

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[4] *Rucker* v. *Secretary of the Treasury*, 555 F. Supp. 1051 (D. Colo. 1983), *appeal docketed* (10th Cir.).

[5] 557 F. Supp. 729 (W.D. Wash. 1982), *appeal docketed* (9th Cir.).

[6] 560 F. Supp. 1101 (D. Conn. 1983), *appeal docketed* (2nd Cir.).

a spouse who did not owe an obligation of support, but who signed a joint return which led to her tax refund being offset against her husband's unpaid support obligation. In *Nelson*, the Court held that a clear "predeprivation notification, specifying the possible defenses and the procedures for asserting those defenses" is constitutionally required under the due process clause. The Court further held that the State welfare agency must provide the opportunity for precertification administrative review of its determinations by an official with authority to remove names from any list of delinquent debtors to be certified to the IRS before any offsets can occur.

Vidra* v. *Egger

In *Vidra* v. *Egger*,[7] the United States District Court for the Eastern District of Pennsylvania viewed the refund-offset provisions as part of the tax collection process. In *Vidra*, spouses of fathers owing delinquent child-support payments sued to enjoin enforcement of the refund-offset provisions, alleging that they violated constitutional due process guarantees. Before the suit, the IRS had informed the spouses that their remedy was against the Pennsylvania welfare agency, and the spouses had not, therefore, filed claims for refund of the offset amounts with the IRS. The Court dismissed the case, citing the anti-injunction provisions of the Code and stated that a refund suit was the only Federal remedy available.

[7] 83-1 USTC ¶ 9158 (Dec. 8, 1982).

III. DESCRIPTION OF S. 150

(THE COLLECTION OF STUDENT LOANS IN DEFAULT ACT OF 1983)

A. Present Law

Overview of Federal guaranteed student loan program

Under present law, the Federal Government guarantees or insures all or a portion of certain types of loans made to students by State governments and other persons with whom the United States has agreements under Federal aid to education programs. As a result, if a student borrower under any of these programs defaults on payment of interest or principal, the United States may be be forced to repay the amount in default. In case of default, the United States is authorized to sue in any State or Federal court having general jurisdiction to enforce payment or to compromise any claim arising under any such guarantee or insurance agreement. However, present law includes no program for collecting, through the tax system, student loan amounts in default.

Disclosure of tax information

In general, tax returns and return information are confidential and may be disclosed only in certain strictly regulated circumstances (Code sec. 6103). Return information includes a taxpayer's identification and the nature and source of his or her income. However, present law provides an exception to assist in evaluating applicants for Federally insured loans. Under this exception, the Secretary of the Treasury may disclose to the head of any Federal agency administering any program under which the United States (or any Federal agency) makes, guarantees, or insures loans, whether or not an applicant for a loan under any such program has a tax delinquent account. This disclosure may be made only for the purpose, and to the extent necessary, to determine the creditworthiness of the loan applicant (sec. 6103(l)(3)).

Another exception permits the Secretary of the Treasury, upon written request from the Secretary of Education, to disclose the mailing address of any taxpayer who is in default on any Federally insured student loan made with respect to higher education or made with respect to certain student assistance programs. (See, sec. 6103(m)(4) and the Higher Education Act of 1965, Title IV, parts B and E, 20 U.S.C. sections 1001, *et. seq.*) In addition, the Secretary of Treasury may disclose the mailing address of any taxpayer who has defaulted on certain loans made under the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher learning (sec. 6103(m)(4)).

These disclosures may be made for use by officers, employees, or agents of the Department of Education to assist in locating the defaulting taxpayer and collecting the unpaid amounts. These disclo-

sures may also be made to any lender, or any State or nonprofit guaranteeing agency participating in loans under the Higher Education Act of 1965, for use by such persons in collecting such loans.

B. Explanation of Provisions

Both the Internal Revenue Code and the Higher Education Act of 1965 would be amended by the bill to establish a new Federal program administered through the tax system for collecting student loans in default.

Amendments to the Internal Revenue Code

Under the bill, a new section dealing with the collection of student loans in default would be added to the Internal Revenue Code (new sec. 6306). Under this provision, in the case of calendar year taxpayers, the Secretary of Treasury would be required to give written notice, no later than January 15 of each calendar year, to each individual with respect to whom that Secretary has received notice under the provisions of the Higher Education Act of 1965 of a default in payments. The notice would be required to explain the provisions of the new collection program, the dollar amount which the individual must pay, and instructions for making payment. If an individual had a taxable year other than a calendar year, notice would be required to be sent no later than 15 days after the close of that taxable year. The amount specified as due at that time would be the amount owing as of the last day of that taxable year.

Amounts collected by the Secretary of the Treasury under this provision would have to be paid in connection with the filing of the taxpayer's income tax return for the taxable year preceding the year in which he or she receives the notice. If an individual failed to pay the full amount required to be paid on or before the due date of the income tax return for that taxable year, the Secretary of the Treasury would assess and collect the unpaid amount as if such amount were a tax, the collection of which would be jeopardized by delay.

The bill would include specific anti-injunction provisions applicable to the new program. No court of the United States would have jurisdiction of any suit brought to restrain or review the assessment or collection made by the Secretary of these delinquent amounts. In addition, no such assessment and collection would be subject to review by the Secretary of Treasury in any proceeding. However, the bill would not preclude any action against a State by an individual to determine his or her liability for any amount assessed and collected, or to recover any such amount.

The Secretary of the Treasury would be required to report to the Secretary of Education, at least monthly, the amount collected under this program. Amounts collected under the program would be transferred by the Secretary of Treasury to the Secretary of Education at the end of each calendar quarter for disposition as described below.

Amendments to the Higher Education Act of 1965

The Higher Education Act of 1965 would be amended to require the Secretary of Education to provide the Secretary of the Treasury

with a list showing the name and last known address of any person who has defaulted on a loan made, guaranteed, or insured by the United States. In addition, the notice would have to state the amount of unpaid principal and accrued interest on each such loan and the name of the holder of each loan. This list would be provided at the end of each calendar quarter.

Loans would be subject to collection under this program if they were in default for at least 6 months at the time the transmittal was made, and either (1) the United States was an assignee of the note (or other evidence of indebtedness) or (2) the note was held by a State, a nonprofit institution, or other specified type of holder and guaranteed by the United States and the amount of the unpaid principal and accrued interest had been determined by a court or by State administrative process.

Amounts collected by the Secretary of the Treasury under this program would be transferred to the Secretary of Education for disposition in accordance with the guarantee agreement between the United States and the State or other organization involved in the loan. Amounts due the Federal Government would be deposited in the general fund of the Treasury.

C. Effective Date

The provisions of the bill would be effective on January 1, 1984.

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